



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Social Security Trust Funds' Appropriations

File: B-261522

Date: September 29, 1995

DIGEST

The amount of funds appropriated to the Social Security trust funds under 42 U.S.C. § 401(a)(3) is tied to the amount of wages certified to the Secretary of the Treasury by the Commissioner of Social Security on the basis of the Social Security Administration's (SSA) records of wages established and maintained by SSA in accordance with wage information reports. The Commissioner, SSA, may consider both individual employee wages, as reported annually by employers to SSA, and wage information reported quarterly by employers to the Internal Revenue Service on Forms 941, in certifying wages to the Secretary of the Treasury.

DECISION

By letter dated May 24, 1995, the Deputy Commissioner for Finance, Assessment and Management, Social Security Administration (SSA), requested our opinion on whether SSA can use wage data collected by the Internal Revenue Service (IRS) in calculating the amount of employee wages for purposes of section 201(a)(3) of the Social Security Act (Act). Section 201(a)(3) appropriates from the general fund of the Treasury into the Social Security Old Age, Survivors and Disability Insurance and Medical Health Insurance trust funds (Trust Funds) amounts determined by applying the applicable tax rate to employees' wages as "certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with [wage information] reports [provided the IRS]." 42 U.S.C. § 401(a)(3).

Background

Section 201(a)(3) annually appropriates to the Trust Funds an amount equivalent to the amount of taxes imposed by certain employment tax laws. As a matter of practice, the Secretary of the Treasury transfers estimated amounts from the general fund of the Treasury to the Trust Funds subject to subsequent adjustments when the estimates are found to have been less than or in excess of actual taxes imposed. Section 201(a)(3) specifies that the Secretary of the Treasury is to determine the amount of taxes imposed "by applying the applicable rates of tax" to

the wages reported by employers to IRS, "which wages shall be certified by the [Commissioner of SSA] on the basis of the records of wages established and maintained by such [Commissioner] in accordance with such reports" of wages¹ filed by employers. 42 U.S.C. § 401(a)(3).²

Prior to 1978, Department of Treasury regulations required employers to submit to IRS quarterly reports of employee wages subject to social security taxes on a two-part Form 941, "Employer's Quarterly Federal Tax Return." One part of the form showed, in the aggregate, the wages paid by the employer and the taxes due for all of the employer's employees. In addition to this information, the other part of the form, Form 941A, listed each employee by name, Social Security number, and the amount of wages paid to the employee for that quarter. IRS sent the Forms 941A to SSA which then posted this wage information to individual employee wage records.

In response to employers' concerns about the burden imposed by these reports,³ Congress, in 1976, directed IRS and SSA to implement a combined annual wage reporting (CAWR) system.⁴ Pub. L. No. 94-202, sec. 232, 89 Stat. 1135 (1976) (codified at 42 U.S.C. § 432). Under the CAWR system, employers submit quarterly reports to IRS on Form 941. As noted above, the Form 941 includes only aggregate quarterly totals of wages paid and taxes which are due. As a result, employers no longer report quarterly, either to IRS or SSA, wages earned by individual employees. Instead, once a year, employers submit W-2 (listing Social Security wages earned by individual employees) and W-3 (providing an aggregate summary of wages paid and

¹SSA's earnings records include both wages and self-employment income. The issue here is limited to wages earned by individuals employed by others.

²Pursuant to the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, 108 Stat. 1464 (1994), under which SSA was made independent of HHS, beginning in 1995 the Commissioner of SSA must certify wages. SSA has, in the past, always certified wages on behalf of the Secretary of HHS.

³"The preparation and filing of this quarterly report involve[d] considerable effort and expense on the part of employers particularly in the case of small and medium-sized companies which d[id] not have the advantage of computerized payroll systems." S. Rep. No. 550, 94th Cong., 1st Sess. 9 (1975). Congress estimated the annual cost to small business as a result of this requirement for detailed quarterly reports to be as high as \$235 million per year in 1975 dollars. Id.

⁴This law directed IRS and SSA to "enter into an agreement for cooperative processing of a revised annual wage reporting form (i.e., form W-2) in a manner which will most effectively and efficiently provide each agency with the information it requires." S. Rep. No. 550, 94th Cong., 1st Sess. 9 (1975).

taxes withheld) forms directly to SSA.⁵ SSA records the W-2 and W-3 wage information in its individual Social Security wage account records, and forwards the W-2 and W-3 information to IRS. IRS then compares the W-3 wage totals to the Form 941 wage totals.

Under the CAWR system, employers submit wage data to IRS and SSA in different form, prepared at different times of the year. Although the total of each employer's quarterly Form 941 reports to IRS should equal the total earnings that an employer annually reports to SSA on its W-2s and W-3s, for a number of reasons, that is not always the case.⁶ Employers generally report more wages on their reports to IRS than to SSA. In 1987, for example, significant differences existed between the amount of wages reported by employers to SSA and IRS. Between 1978 and 1987, cumulatively, employers reported over \$58 billion less in wages to SSA than to IRS. Social Security: More Must Be Done to Credit Earnings to Individuals' Accounts, GAO/HRD-87-52, Sept. 18, 1987.

Because of difficulties in reconciling amounts reported by employers on their Forms 941 and on their W-2s and W-3s, SSA has not made a final certification of wages for purposes of section 201(a)(3). In 1992, we reported that there was a cumulative difference of over \$55 billion between IRS's and SSA's wage records. Reconciliation Improved SSA Earnings Records, but Efforts Were Incomplete, GAO/HRD-92-81, Sept. 1992 (1992 GAO Report).

Soon after Congress enacted the CAWR system, SSA and IRS entered into a formal Memorandum of Understanding (MOU) to share wage data and to resolve, or reconcile, the differences in the wages reported to them. Generally, the reconciliation process includes SSA contacting employers to obtain corrected wage information. SSA also refers certain cases to IRS to contact employers and to assess penalties. Penalty enforcement became a critical component of the reconciliation process beginning in 1988, and remains so under the most recent MOU, implemented in 1994.

⁵W-2 and W-3 forms are due by the end of February following the tax year ending December 31. The date for the 4th quarter filing of the Form 941 is the end of January.

⁶SSA informed us that the primary reason for the discrepancies is the different reporting due dates for the Forms 941 and the W-2 and W-3 forms. See n. 5 *supra*. Other reasons include (1) employers misunderstanding of the wage reporting instructions, (2) businesses terminating operations during the year, and (3) errors made and corrected with either IRS or SSA but not both. See Reconciliation Improved SSA Earnings Records, but Efforts Were Incomplete, GAO/HRD-92-81, Sept. 1992, at 22-26.

SSA and IRS established a three-step process to determine trust fund revenues: (1) initial transfers based on revenue estimates in the President's annual Budget submission to the Congress; (2) interim adjustments based on SSA's certification of taxable wages reported by employers on quarterly 941 reports to IRS; and (3) final certifications based on SSA's detailed wage records of earnings, including the W-2 and W-3 forms filed by employers.

Currently, SSA is unable to reconcile approximately \$11.1 billion. Of the amounts of social security taxes employers have reported as owed to the IRS, SSA cannot allocate, on the basis of the W-2s and W-3s submitted to it by employers, the unreconciled amounts to individual employee accounts. SSA carries the unreconciled amounts in a suspense account for allocation to the record of wages of the proper employees once the amounts are reconciled. Because of its concerns about the completeness of the wage records submitted to it, SSA has only made interim certifications of Trust Fund revenues to the Secretary of the Treasury. On this basis, the Trust Funds have been "provisionally" credited with the unreconciled amount.

Analysis

Until last year, SSA recorded the "unreconciled" amount (the \$11.1 billion) as part of the Trust Fund's revenues on its financial statement. At the encouragement of its Inspector General, SSA showed this amount as a liability to the general fund on its fiscal year 1994 statement. The Inspector General has argued that under section 201(a)(3), the Trust Fund is entitled only to the amount of taxes imposed based on wages shown in "records of wages established and maintained" by SSA.⁷ According to the Inspector General, when SSA cannot reconcile its W-2 and W-3 data to IRS's Form 941 data, SSA must defer to the W-2 and W-3 data. Because SSA cannot account for the additional \$11.1 billion shown on the Forms 941, the Inspector General reasoned, the Trust Fund is not entitled to it.

SSA argues, on the other hand, that in certifying wages pursuant to section 201(a)(3), SSA can take into account information reported to IRS on Forms 941. SSA maintains that the information reported on the Forms 941 is the most accurate and complete wage information available to the government. SSA also argues that to the extent unreconciled Form 941 wages exceed W-2 wages, it is logical to include the unreconciled wages in the amount certified. In this regard, SSA points out that the employers treated the unreconciled amount as Social Security wages and reported social security taxes on such wages. Further, according to SSA, there

⁷This opinion is consistent with the view expressed in an earlier GAO report, Reconciliation: Improved SSA Earnings Records, but Efforts Were Incomplete, GAO/HRD-92-81, Sept. 1992, at 27-30.

is insufficient evidence to conclude that they do not represent actual Social Security wages. Finally, SSA observes that excluding wages reported on Forms 941 from the amount certified would result in crediting to the general fund amounts that employees had paid to satisfy their social security tax liability.

The issue is whether SSA can use wage data collected by IRS in certifying the amount of wages for purposes of section 201(a)(3). To the extent relevant here, section 201(a)(3) provides as follows:

"There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund . . . out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of . . . (3) the taxes imposed . . . with respect to wages . . . reported to the Secretary of the Treasury or his delegates pursuant to subtitle F of Title 26 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax . . . to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports"

As the Inspector General points out, section 201(a)(3) requires the Commissioner to certify wages "on the basis of the records of wages established and maintained" by the Commissioner. In analyzing the issue at hand, it is important to view section 201(a)(3) as a whole. The certification requirement imposed on SSA by section 201(a)(3) refers to records of wages established and maintained by SSA "in accordance with such reports." The reference to "such reports" includes the Form 941 mentioned earlier. The word "accordance" is defined to mean in agreement, harmony, and consistent with. Webster's Ninth New Collegiate Dictionary (1987). The plain meaning of the language of section 201(a)(3), referring to SSA records maintained "in accordance with" the Forms 941, clearly indicates that the law expects SSA's records to reflect the wage data reported to IRS on the Forms 941.

One could argue that the reference to "such reports" only meant the old Form 941A (not the aggregate wage data captured by the Form 941) that reported individual employee wage information by employee name and social security number. This reading would, however, render the statutory phrase "in accordance with such reports" meaningless, contrary to established maxims of statutory construction. We also find no indication of a congressional desire to exclude reliable sources of information such as the Forms 941 from the Commissioner's consideration when certifying wages. To the contrary, Congress in section 205 of the Social Security Act, 42 U.S.C. § 405, did not limit the sources of information the Commissioner could use in establishing individual wage accounts. Section 205(c)(2)(A) provides as follows:

"On the basis of information obtained by or submitted to the Secretary, and after such verification thereof as he deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to and the amount of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived"

Section 232 of the Act appears to confirm this reading. Before section 232 was enacted in 1976, SSA received essentially the same wage information that was sent to IRS, and the information went to both agencies at the same time. Before 1976, therefore, SSA had little difficulty in concluding that the wage information in its individual employee files were "in accordance with" wage information reported to IRS and Treasury. Thus, SSA had no problem making its final certification of wages required under section 201(a)(3). When Congress enacted section 232 in 1976, initiating the CAWR, Congress anticipated the need for SSA to access IRS wage data to ensure that SSA's wage records would be as accurate after implementation of CAWR as before. Section 232 directs the Secretary of the Treasury to make the Forms 941, as well as other necessary tax information, available to SSA. It authorizes Treasury and SSA to enter into an agreement to accommodate such exchange of information; and it instructs SSA to process that information. 42 U.S.C. § 432.

Reading section 232 together with sections 201(a)(3) and 205(c)(2)(A) suggests that SSA should not rely, for purposes of the section 201(a)(3) wage certification, solely on data collected from the W-2s and W-3s, but also may refer to data from the Forms 941.⁸ We find support for this view in the legislative history of section 232. The Senate Finance Committee explained that IRS and SSA should "enter into an agreement for cooperative processing of a revised annual wage reporting form . . . in a manner that will most effectively and efficiently provide each agency with the information it requires." S. Rep. No. 550, 94th Cong., 1st Sess. 9, 10 (1976). Moreover, the Senate Finance Committee stated that "the information sharing should not have any impact on the financial status of the social security program." Id.

⁸"In ascertaining legislative intent, whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together." 2A J.G. Sutherland, Statutes and Statutory Construction, § 51.02 (4th ed. C.D. Sand ed. 1972). See Morton v. Mancari, 417 U.S. 535, 550 (1974); 54 Comp. Gen. 371, 373 (1974); B-236057, May 9, 1990.

SSA's characterization of the reliability of the IRS Form 941 wage data is, we believe, sound. SSA asserts that the Form 941 data is the most accurate and complete wage data available primarily because employers, when reporting it as wages subject to social security taxes, claimed taxes as due on it. SSA's assertion is compelling, especially in light of the fact that the information reported on a Form 941 is subject to IRS audit and the employer is subject to penalty for filing incorrect information. Consequently, we conclude, to the extent SSA believes the Form 941 data will improve the accuracy of its own records, SSA may consider, and where appropriate use, this data in making a final certification.

/s/James F. Hinchman
for Comptroller General
of the United States